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CRP. NPD.No.2281 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.09.2024

Pronounced on:04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. NPD. No.2281 of 2021
and CMP. No.17276 of 2021

S.Lakshmi Bai

... Petitioner

Vs

1.Government of Tamil Nadu,
Rep. by the District Collector,
Dharmapuri.

2.Assistant Director,
Department of Mining,
Dharmapuri.

... Respondents

Prayer: The Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 24.03.2021 made in I.A. No.753 of 2018 in O.S. No.38 of 2005 on the file of the Subordinate Judge, Dharmapuri.

For Petitioner

: Mrs.Vasudha Thiagarajan

For Respondents

: Mr.R.Ramanlal,
Additional Advocate General
assisted by Mr.R.Siddharth,
Government Advocate.



ORDER

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The Plaintiff, aggrieved by the order of the Trial Court setting aside the exparte decree in O.S No. 38 of 2005 in and by an order dated 24.03.2021 in I.A. No. 753 of 2018, is the revision petitioner.

2. I have heard Mrs.Vasudha Thiagarajan, learned counsel for the revision petitioner and Mr.Ramanlal, learned Additional Advocate General assisted by Mr.Siddarth, learned Government Advocate for the respondents.

3. The learned counsel for the petitioner would submit that the Trial Court passed an erroneous order, incorrectly exercising discretion to set aside the ex parte decree. She would contend that the reasons assigned in the affidavit are bereft of any particulars and in any event, did not justify the huge and inordinate delay of 3180 days in approaching the Court with an application to set aside the exparte decree. She would refer to the affidavit filed in the support of I.A No.753 of 2018 in this regard.

4. She would further submit that the Trial Court has failed to advert



to the valid objections made by the revision petitioner to the Application seeking to set aside the exparte decree. She would also contend that the respondents were represented by a learned counsel even before the Trial Court and therefore, the solitary reason that the date was not noted down by the staff is not an acceptable reason at all.

5. Per contra, Mr. Ramanlal, learned Additional Advocate General representing the learned Government Advocate for the respondents would submit that the suit itself was not maintainable in the first place and further, he would take me through the averments in the plaint as well as the written statement filed by the respondents. He would submit that an opportunity ought to be given to the respondents considering the fact that the lease has already expired long back and the petitioner has also not approached the Court within a reasonable time period.

6. The learned Additional Advocate General would also place reliance on the Hon'ble Division Bench judgment of this Court in *Meenakshi Sundaram Textiles represented by its Managing Director vs Valliammal Textile Limited*, reported in (2011) 3 CTC 168. He would further contend that the suit itself being a sheer abuse of process of Court



and law, this Court can exercise revisional powers under Article 227 of the Constitution of India and even strike off the plaint.

7. He would in any event contend that the Trial Court having not applied its mind by passing the ex parte decree in line with the dictum of the Hon'ble Division Bench of this Court, there is no error apparent on the face of the order of the Trial Court setting aside the ex parte decree, affording an opportunity to the respondents to defend the suit.

8. I have carefully considered the submissions advanced by the learned counsel on either side.

9. In I.A No.753 of 2018 in O.S. No.38 of 2005, the only reason assigned by the respondents appears to be that the records were sent to a different Office where the papers got mixed up and therefore, subsequently the above proceedings were not followed up by the respondents.

10. The revision petitioner has filed a detailed counter denying the self-serving claims made in I.A No.753 of 2018 besides also specifically



stating that even after the exparte decree came to be passed, the revision petitioner has addressed several communications to the respondents, enclosing the copy of the judgment and decree and therefore to state that the respondents never knew about the exparte decree is not believable.

11. The respondents have not filed any rejoinder denying the statements in the counter that the petitioner has sent several representations to the respondents informing them about the exparte decree and also enclosing a copy of the judgment and decree by calling upon the respondents to comply with the decree. The Trial Court has failed to see that in an Application seeking condonation of delay of such magnitude viz., 3180 days, the Applicant should show sufficient cause for the delay and for not filing the Application to set aside the exparte decree within the stipulated time of 30 days. However, reasons are found absent in the present case. Merely because an opportunity should be afforded to the respondents, such delay cannot be lightly justified and condoned, especially when the opposing party has seriously objected to the condonation of delay by filing a detailed counter and also bringing it to the notice of the Court that the reasons assigned in the affidavit seeking condonation of delay cannot be true.



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12. No doubt, the *exparte* decree passed by the Trial Court is without any application of mind. The said practice of passing such *exparte* decrees by Trial Courts has been heavily condemned by the Hon'ble Division Bench of this Court in *Meenakshi Sundaram Textiles's* case (referred herein *supra*). However, the facts of the said case cannot be applied in the present circumstances since in the case before the Hon'ble Division Bench, an Appeal had been preferred against the dismissal of an Application under Order IX Rule 13 of the Code of Civil Procedure, 1908, to set aside the *exparte* decree and in the said Appeal, the judgment of the Trial Court was tested and found to be not conforming with the provisions of the Code of Civil Procedure, 1908. On a reading of the said judgment, it is seen that the question of any delay did not arise before the Hon'ble Division Bench. However, in the present case, it was only an Application to condone delay in filing the Application to set aside the *exparte* decree and in such circumstances, I do not deem it fit and proper to go into the merits of the respective claims of the parties, unless and until, the respondents had shown sufficient cause for condonation of the delay of 3180 days.

13. Admittedly, excepting the vague and bald reasons set out in the



affidavit that papers got misplaced, I do not find any valid reason or excuse for the delay to be accepted and condoned. The Trial Court clearly erred in allowing the Application and condoning the delay when the respondents had not only shown sufficient or reasonable cause and came to Court with incorrect particulars as if they had knowledge of the exparte decree only when they were served with notice in the Execution Proceedings. It is also brought to my notice that the Execution Petition is pending and M.K.S.Maniyan, the plaintiff's husband was a partner of the M/s.Moon Rock and Marble Company was no more even on the date of filing of the suit and it is only the lessee's wife who is the plaintiff, seeking the relief of a mandatory injunction to permit the plaintiff to quarry, remove, dress the stones to dimensional blocks and to issue transport permits, to transport the rough stone blocks to any place of the plaintiff's choice, in terms of the lease agreement with the defendants.

14. Merely because, the State appears to be the applicant seeking condonation of delay, no special relaxation can be shown and the same yardstick which would apply to any other Applicant could equally apply in all force to cases where the State is the petitioner seeking condonation of delay.



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15. In fine, this Civil Revision Petition is allowed. The order in I.A No.753 of 2018 is set aside and consequently, I.A No.753 of 2018 in O.S.No.38 of 2005 stands dismissed. However, it is made clear that it is open to the respondents to take out appropriate Application under Section 47 of the Code of Civil Procedure, 1908 and object to the execution of the decree in a manner known to law. Consequently, connected Miscellaneous Petition is also closed. There shall be no order as to costs.

04.10.2024

Index:Yes/No

Speaking order/Non-speaking order

rkp

To

1.The District Collector,
Dharmapuri.

2.The Assistant Director,
Department of Mining,
Dharmapuri.

3.The Section Officer,
VR Section,
Madras High Court,
Chennai.

P.B.BALAJI, J.



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**Pre-Delivery Order in
CRP. NPD. No.2281 of 2021
and CMP. No.17276 of 2021**

04.10.2024